

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 15, “General License Regulations,” Iowa Administrative Code.

These adopted changes clarify what additional information may be sought by the Department to determine residency status of license applicants and license holders and provide a process for suspension and revocation of licenses not properly obtained.

Notice of Intended Action was published in the May 5, 2010, Iowa Administrative Bulletin as **ARC 8729B**. A public hearing was held on May 25, 2010, and two comments were received. The first comment suggested implementing a three-prong residency test in which a person could prove residency by both having a state driver’s license and a state-registered vehicle and by filing state income taxes. The Department believes this test too closely mirrors the previous standards, which resulted in fraud. It is for this reason, combined with related inequity and loss of revenue, that the Department proposed to amend these rules under Notice of Intended Action to add more specific criteria. In short, the Department has determined that the new standards will ensure that those claiming to be Iowa residents, and those receiving the privileges thereof, are true residents.

The second comment sought clarification on who would be required to submit the additional documents and expressed concern that the process was burdensome to applicants and the Department alike. The Department intends to seek additional information from individuals only when there are reasonable grounds for questioning their residency. The Department has a long-standing process for performing such inquiries under the existing rules and is more than prepared to continue this practice under the new standards adopted herein. The second commenter also wanted to ensure that a license applicant or license holder could challenge the Department’s finding. However, Iowa Administrative Code 571—Chapter 7 already provides appeal rights to affected persons. Finally, the second commenter wanted to know how the Department would make the residency determination. The Department shall review all submitted documents and, weighing the totality of the evidence submitted by the person, shall make a residency determination.

Several changes have been made to the amendments published under Notice, primarily to align the rule language with Iowa Code section 483A.1A. In that regard, the definition of “Nonresident” and the introductory paragraph of the definition of “Principal and primary residence or domicile” have been modified and the definition of “Resident” has been expanded, a change modeled directly on the Iowa Code language. Finally, language in rule 571—15.10(483A) pertaining to notice of residency determination has been clarified, and a cross-reference in subrule 15.11(2) has been corrected.

These amendments are intended to implement Iowa Code chapter 483A.

These amendments shall become effective September 15, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **571—15.2(483A)**:

“Immediate family member” means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

“Nonresident” means a person who is not a resident as that term is defined in this rule.

“Principal and primary residence or domicile” means the one and only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return. Relevant factors used to determine a person’s principal and primary residence or domicile include the following:

1. Proof of place of employment, which must include the address of the person’s place of employment or business, including the area or region where a majority of the person’s work is performed.

2. Physical address, which shall be the person's 911 address(es) or the address of an immediate family member. A post office box or a forwarded address shall not be accepted by the department to verify the person's principal and primary residence or domicile.

3. Utility records, which must include the person's name and be associated with the physical address provided for as the person's principal and primary residence or domicile. The types of records that may be submitted include rental and lease documents and telephone, cellular phone, electricity, water, sewer, cable or satellite television, and any other utility records.

4. Real estate records, which include legal documents showing ownership or leasehold interests of any and all real estate related to the physical address used by the department to verify the person's principal and primary residence or domicile. These records should also provide the time period of such ownership or rental.

5. Vehicle registration(s) for any vehicles owned or leased by the person and immediate family members.

6. Portion of federal, state or local income tax returns filed during the relevant time period showing the address provided on those forms by the person.

7. Documentation of homestead tax exemption allowed to the person or immediate family member(s) for all states in which such exemption is allowed.

8. Documentation of any coinhabitants, other than the person's immediate family members, who use the same principal and primary residence or domicile.

"Resident" means a natural person who meets any of the following criteria during each year in which the person claims status as a resident:

1. Has physically resided in this state at the person's principal and primary residence or domicile for a period of not less than 90 consecutive days immediately before applying for or purchasing a resident license, tag, or permit under this chapter and has been issued an Iowa driver's license or an Iowa nonoperator's identification card. A person is not considered a resident under this rule if the person is residing in the state only for a special or temporary purpose including but not limited to engaging in hunting, fishing, or trapping.

2. Is a full-time student at either of the following:

- An accredited educational institution located in this state if the person resides in this state while attending the educational institution.

- An accredited educational institution located outside of this state, if the person is under the age of 25 and normally resides with at least one parent or legal guardian who maintains a principal and primary residence or domicile in this state.

3. Is a student who qualifies as a resident pursuant to paragraph "2," second bulleted paragraph, only for the purpose of purchasing any resident license specified in Iowa Code section 483A.1 or 484A.2.

4. Is a resident under 18 years of age whose parent is a resident of this state.

5. Is a member of the armed forces of the United States who is serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to Iowa Code chapter 422, division II, for the preceding tax year, or is stationed in this state.

ITEM 2. Adopt the following new rules 571—15.9(483A) to 571—15.11(483A):

571—15.9(483A) Proof of residency required. The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

571—15.10(483A) Residency status determination. Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of

these rules and Iowa Code chapter 483A. The department shall provide the person with written notice of the finding.

571—15.11(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.

15.11(1) *Suspension or revocation of license.* If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7. If the department finds that a nonresident has obtained a resident license fraudulently or through intentional misrepresentation, the person shall be guilty of a simple misdemeanor, punishable as a scheduled violation under Iowa Code section 805.8B.

15.11(2) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in rule 571—15.10(483A) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.11(3) *Magistrate authority.* Nothing in this chapter shall limit the magistrate's authority as described in Iowa Code section 483A.21 to suspend or revoke licenses.

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